



DEPARTMENT OF TRANSPORTATION

Maritime Administration

Buy America Waiver Notification

AGENCY: Maritime Administration, U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding the finding of the Maritime Administration (MARAD), in coordination with the Federal Highway Administration (FHWA), that it is appropriate to grant a Buy America waiver based on nonavailability to the Philadelphia Regional Port Authority (PhilaPort) for procurement of foreign iron and steel components for the Packer Avenue Marine Terminal (PAMT) Capacity and Warehouse Relocation FY2017-2018 Infrastructure for Rebuilding America (INFRA) project. The foreign iron and steel components are part of a Medium Voltage (MV) Cable Reel System, which is necessary for the conversion of two ship-to-shore (STS) cranes' drive power supply from diesel to electric. The non-domestic parts include: (i) Drive Gearbox and Motors; (ii) Electrical and Communications Collector System; (iii) MV cable drum; (iv) MV cable guides and diverter mounted to STS structure/legs; and (v) Gantry level bi-directional multi-roller, curved cable guide.

DATES: The effective date of the waiver is [*Insert date one day after publication in Federal Register*].

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Robert Bouchard, Director, Office of Port Infrastructure Development, 202-366-5076 or via e-mail at Robert.Bouchard@dot.gov. For legal questions, please contact Lauren Gill, MARAD Office of Chief Counsel, 202-366-2150, or via e-mail at Lauren.Gill@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the *Federal Register's*

home page at: www.FederalRegister.gov and the Government Publishing Office's database at: www.GovInfo.gov.

Background

PhilaPort's FY2017-2018 INFRA Project is required to follow the FHWA's Buy America requirements at 23 U.S.C. 313 and implementing regulations at 23 CFR 635.410. FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding MARAD's finding that it is appropriate to grant the PhilaPort a Buy America waiver based on nonavailability for procurement of foreign iron and steel components for the MV Cable Reel System, which is necessary for the conversion of two ship-to-shore (STS) cranes' drive power supply from diesel to electric. The non-domestic parts include: (i) Drive Gearbox and Motors; (ii) Electrical and Communications Collector System; (iii) MV cable drum; (iv) MV cable guides and diverter mounted to STS structure/legs; and (v) Gantry level bi-directional multi-roller, curved cable guide.

Background on the Project: The DOT awarded PhilaPort¹ a \$25.5M FY2017-2018 INFRA grant² for its PAMT Capacity and Warehouse Relocation Project, which has a total project cost of roughly \$122M.³ MARAD is designated as the DOT operating agency responsible for administering the Project. The Project includes the electrification of two existing Hyundai STS diesel cranes (referred to as H-6 and H-7) to eliminate air emissions

¹ PhilaPort's Unique Entity Identifier (UEI) is J4QYLRK4VSR5.

² The INFRA program is described under the assistance listing program title "Nationally Significant Freight and Highway Projects" (assistance listing number 20.934).

³ The Federal Award Identification Number (FAIN) for the INFRA project is 693JF71910026.

and improve operational reliability. The cranes were installed at PAMT in 2004 and are the most utilized cranes on the terminal for unloading cargo from container vessels. According to PhilaPort, depending on the workload, the cranes can consume between 20 to 100 gallons of diesel fuel per hour.

PhilaPort determined that delivering utility-supplied electric power to the STS cranes required a trailing MV Cable Reel System. The MV Cable Reel System allows the STS cranes to be mobile along the dock by reeling cable in and out from a motorized and synchronized cable drum as the crane moves along the berth. The cable also delivers fiber communications to and from the cranes and the terminal. PhilaPort currently has five other STS cranes that operate alongside the H-6 and H-7 cranes that use a similar MV Cable Reel system. Additionally, the dock where H-6 and H-7 operate has been retrofitted to allow for the electrification of the two cranes via this system.

The crane electrification project will have substantial environmental benefits due to the elimination of harmful air emissions after the transition to electric drives. PhilaPort's PAMT has a planned annual container throughput that is forecasted to require 4,103 hours of operation for both H-6 and H-7. At this level of operation, PhilaPort estimates that converting the cranes to utility-supplied electricity would eliminate 109,896 of diesel crane hours and over 100,000 tons of harmful air emissions over their lifetime. Additionally, the conversion of the cranes from diesel to electric will result in significant cost savings to PhilaPort due to the reduction in fuel usage, energy costs, and improvements in efficiency and reliability of the cranes.

Background on the Waiver Request: PhilaPort began designing the crane electrification project in April 2020, at which point it became apparent that a Buy America-compliant MV Cable Reel System could not be sourced domestically. After further discussions with MARAD, PhilaPort requested that the design engineer perform a market study among potential suppliers. The design engineer contacted three known suppliers in the industry and one potential supplier in

a related industry. All four respondents confirmed that they could not supply a fully Buy America-compliant MV Cable Reel System.

After receiving the results of the market study and discussing with MARAD, PhilaPort proceeded to bid the crane electrification project in the hope that bidding contractors could engage resources to identify a fully Buy America-compliant MV Cable Reel System. On June 28, 2021, PhilaPort received bids on the Project from only two contractors, both of whom proposed the same non-compliant supplier for the MV Cable Reel System.

After unsuccessfully identifying domestic manufacturers of the MV Cable Reel System, on September 8, 2021, PhilaPort submitted a Buy America waiver request to MARAD for the procurement of an MV Cable Reel System containing foreign iron and steel components needed to complete the PAMT INFRA Project. The foreign components⁴ include: (i) Drive Gearbox and Motors; (ii) Electrical and Communications Collector System; (iii) MV cable drum; (iv) MV cable guides and diverter mounted to STS structure/legs; and (v) Gantry level bi-directional multi-roller, curved cable guide.

The MV Cable Reel System is included under an approximately \$5.5 million contract to complete the crane electrification project. PhilaPort estimates that the MV Cable Reel System itself will cost \$410,000 out of that total project cost. Of the \$410,000, approximately \$110,000, or 2% of the total contract cost, is the cost of the foreign steel and iron components contained in the MV Cable Reel System. The remaining \$300,000 is non-steel/iron electrical trailing cable. All other costs associated with this contract are expected to comply with Buy America requirements.

In accordance with the statutory requirement at 23 U.S.C. 313(g), MARAD published a notice of intent to issue a waiver on the FHWA website on April 27, 2022, at <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=165>. MARAD received no

⁴ Depending on which vendor is selected by PhilaPort, the country of origin for these components will most likely be either Germany or Italy.

comments in response to the publication. Additionally, the PhilaPort point of contact similarly did not receive any comments or inquiries. Thus, PhilaPort did not receive any new information indicating that the subject components could be produced by domestic manufacturers.

Although PhilaPort did not identify a Buy America-compliant MV Cable Reel System, it provided information to MARAD supporting its waiver request, including information:

- Supporting the necessity of the MV Cable Reel System for converting the STS cranes from diesel to electric;
- Documenting efforts to locate compliant manufactured products;
- Demonstrating that alternative designs were infeasible; and
- Describing the effects of denying the request.

Although ultimately unsuccessful, PhilaPort made substantial efforts to find a Buy America-compliant MV Cable Reel System.

Timing and Need for a Waiver. According to PhilaPort, the approval of a Buy America waiver for the MV Cable Reel System is critical to maintain the schedule of ongoing construction on the INFRA Project. Currently, the lead time for this major component is between 20 to 30 weeks, so any delay in approving the waiver will result in project delays and additional time the STS cranes will operate under diesel power. Without the waiver for the relevant system, the crane electrification project cannot move forward, and the environmental and operational benefits of the project would be lost.

Executive Order 14005. Executive Order 14005, “Ensuring the Future is Made in All of America by All of America’s Workers,” provides that agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the U.S. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from PhilaPort and the lack of comments following publication of a notice seeking comment on April 27, 2022, regarding available domestic manufacturers for the subject parts, MARAD concludes that issuing a waiver is consistent with Executive Order 14005.

Finding and Request for Comments

Based on all the information available to the Agency, MARAD concludes that there are no Buy America-compliant relevant components for the MV Cable Reel System needed for the Project, including: (i) Drive Gearbox and Motors; (ii) Electrical and Communications Collector System; (iii) MV cable drum; (iv) MV cable guides and diverter mounted to STS structure/legs; and (v) Gantry level bi-directional multi-roller, curved cable guide. This finding only includes components identified in the waiver request and supporting documents included on FHWA's Website.

The PhilaPort and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 381, if applicable.

To avoid the possibility of requiring waivers for these items in the future, MARAD will work with industry to better understand the demand for these components and the potential for domestic production of these items in the future. We will then follow-up with the Office of Management and Budget's Made in America Office and the U.S. Department of Commerce, as appropriate, to assess the potential for domestic production to meet the forecasted demand for these items.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), MARAD is providing this notice as its finding that a waiver of Buy America requirements is appropriate. MARAD invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's Website via the link provided to the waiver page noted above.

(Authority: 23 U.S.C. 117; 23 U.S.C. 313; Pub. L. 110-244; 23 CFR 635.410)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

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